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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - x  
In Re: : Chapter 11  
:  
Circuit City Stores, Inc., : Case No. 08-35653 (KRH)  
et al., :  
Debtors. x Jointly Administered  
- - - - - x  
Circuit City Stores, Inc., :  
:  
Plaintiff, :  
:  
v. : Adv. Pro. No.: \_\_\_\_\_  
:  
Active Media Services, :  
Inc., :  
Defendant. :  
- - - - - x

**COMPLAINT**

Circuit City Stores, Inc. and its affiliated  
debtors and debtors-in-possession in the above-captioned  
chapter 11 cases (collectively, "Circuit City" or the  
"Debtors"), by and through their undersigned counsel,  
for their Complaint, allege upon knowledge as to

themselves and their own actions, and upon information and belief as to all others, as follows:

**NATURE OF THE ACTION**

1. Circuit City brings this action against Active Media Services, Inc. ("Active" or "Defendant") to recover the sum of not less than \$19,178,522.73 due and owing from Active to Circuit City relating to an advertising brokerage relationship between the parties. In addition to various breaches of contract by Active, Circuit City also seeks recovery for unjust enrichment and for certain preferential transfers and fraudulent transfers that occurred during the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings, as well as turnover of property of Circuit City's bankruptcy estate.

**THE PARTIES**

2. Plaintiff Circuit City is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Richmond, Virginia. Circuit City is a debtor and debtor in possession in the above-captioned chapter 11 bankruptcy proceedings, and it was a leading specialty retailer of

consumer electronics and operated large nationwide electronics stores that sold, among other things, televisions, home theatre systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics.

3. Upon information and belief, Defendant Active Media Services, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in Pearl River, New York.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(b).

5. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. This action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O).

**FACTUAL ALLEGATIONS**

**A. Circuit City's Bankruptcy Cases.**

7. On November 10, 2008, Circuit City and certain of its subsidiaries filed voluntary petitions with this Court for relief under chapter 11 of title 11,

United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code").

8. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors.

9. To date, no trustee or examiner has been appointed in these chapter 11 cases.

10. On November 12, 2008, the Court appointed Kurtzman Carson Consultants LLC ("KCC") as claims, noticing and balloting agent for the Debtors in these chapter 11 cases pursuant to 28 U.S.C. § 156(c).

11. On December 10, 2008, the Court entered that certain Order Pursuant to Bankruptcy Code Sections 105 and 502 and Bankruptcy Rules 2002, 3003(c)(3), and 9007 (I) Setting General Bar Date and Procedures for Filing Proofs of Claim; and (II) Approving Form and Manner of Notice Thereof (Docket No. 890) (the "Claims Bar Date Order").

12. Pursuant to the Claims Bar Date Order, the deadline for filing all "claims" (as defined in 11 U.S.C. § 105(5)) arising before November 10, 2008

against the Debtors by any non-governmental entity was 5:00 p.m. (Pacific) on January 30, 2009 (the "General Bar Date"). The deadline for governmental units to file claims that arose before November 10, 2008 was 5:00 p.m. (Pacific) on May 11, 2009 (the "Governmental Bar Date"). Pursuant to the Claims Bar Date Order, this Court approved the form and manner of the claims bar date notice, which was attached as Exhibit A to the Claims Bar Date Order (the "Claims Bar Date Notice").

13. On December 17 and 19, 2008, KCC served a copy of the Claims Bar Date Notice on all parties who filed notices of appearance pursuant to Bankruptcy Rule 2002, all of the Debtors' scheduled creditors in these cases, the Debtors' equity holders, and certain other parties (Docket No. 1314). In addition, the Debtors published the Claims Bar Date Notice in The Wall Street Journal (Docket No. 1395) and The Richmond Times-Dispatch (Docket No. 1394).

14. On January 13, 2009, Active filed a proof of claim asserting an unsecured claim in the amount of \$2,129,242.12 against the Debtors for "media and travel services" ("Claim No. 3895").

15. On January 16, 2009, this Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores. The going out of business sales concluded on or about March 8, 2009.

**B. The Advertising Agreement Between Active and Circuit City.**

16. On December 30, 2003, Circuit City and Active entered into an agreement (as amended, the "Advertising Agreement") pursuant to which Active would purchase cable and network television advertising on behalf of Circuit City. A true and correct copy of the Advertising Agreement is annexed hereto as Exhibit A<sup>1</sup> and is incorporated herein by reference.

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<sup>1</sup> The Advertising Agreement contains certain confidential and/or proprietary information. Accordingly, the Debtors will file a motion to seal the Advertising Agreement.

17. Pursuant to the Advertising Agreement, the "purpose of this [Advertising Agreement] is to set forth the terms of a transaction for the sale by [Circuit City] to [Active], and Active's purchase from [Circuit City], of certain of [Circuit City's] merchandise, as well as the purchase by Active on behalf of [Circuit City] of certain media, goods and/or services." Advertising Agreement at p.1, Recitals.

18. Under the Advertising Agreement, Circuit City agreed to sell to Active certain consumer and electronics merchandise identified in a schedule to the Advertising Agreement. Advertising Agreement ¶ 1.

19. In exchange for the merchandise, Active agreed to provide Circuit City with certain advertising brokerage services. Advertising Agreement at p. 1, Recitals; id. ¶ 3.

20. In connection with these transactions, Active issued to Circuit City a certain amount of trade credits (the "Trade Credits"), purportedly based on the value of the merchandise sold to Active. Advertising Agreement ¶ 2.

21. Circuit City could then redeem the Trade Credits to pay for a portion of the advertising services it purchased from Active pursuant to the Advertising Agreement (the "Trade Credit Requirement"). Advertising Agreement ¶ 4.

22. Circuit City was required to pay for the remaining portion of the advertising services with cash (the "Cash Payment Requirement"). Advertising Agreement ¶ 4.

23. Under the initial terms of the Advertising Agreement, payment by Circuit City to Active on account of advertising services relating to "spot television media for the first quarter of calendar 2004" was to be in the form of a sixty-five percent (65%) Cash Payment Requirement and a thirty-five percent (35%) Trade Credit Requirement. Advertising Agreement ¶ 4.

24. Thereafter, the Cash Payment Requirement portion and Trade Credit Requirement portion due from Circuit City on account of Active's invoices would be determined solely by Active based on Circuit City's advertising demands. Advertising Agreement ¶ 4.

25. With respect to the Trade Credits, the Advertising Agreement provided that the "Trade Credit shall be utilized solely in accordance with the terms and conditions of this [Advertising Agreement] in connection with the purchase by [Circuit City] of media, goods and/or services and shall not be redeemable for cash." Advertising Agreement ¶ 2.

**C. The Addenda to the Advertising Agreement.**

26. Addendum 2. On October 9 2007, Circuit City and Active entered into Addendum 2 to the Advertising Agreement ("Addendum 2").

27. Pursuant to Addendum 2, Circuit City sold to Active additional merchandise identified on a schedule to Addendum 2. Addendum 2 ¶ 1.

28. In connection with the sale of additional merchandise to Active under Addendum 2, Active issued additional Trade Credits to Circuit City. Addendum 2 ¶ 2(i).

29. Addendum 3. On March 18, 2008, Circuit City and Active entered into Addendum 3 to the Advertising Agreement ("Addendum 3").

30. Pursuant to Addendum 3, Circuit City assigned to Active its rights of use to certain previously booked hotel reservations at the Mandalay Bay Resort & Casino. Addendum 3 ¶ 1.

31. In connection with the assignment of Circuit City's rights to Active under Addendum 3, Active issued additional Trade Credits to Circuit City. Addendum 3 ¶ 2(A).

32. Addendum 4. On August 26, 2008, Circuit City and Active entered into Addendum 4 to the Advertising Agreement ("Addendum 4"). A true and correct copy of Addendum 4 is annexed hereto as Exhibit B and is incorporated herein by reference.

33. Pursuant to Addendum 4, Circuit City sold to Active additional merchandise identified on a schedule to Addendum 4 with a total value of \$20,007,642 (the "Merchandise"). Addendum 4 ¶ 1(i).

34. In connection with the sale of additional Merchandise to Active under Addendum 4, Active issued additional Trade Credits to Circuit City in the amount of \$20,000,000. Addendum 4 ¶ 2(i).

35. The quantity and value of Merchandise sold to Active under Addendum 4 was revised pursuant to an amendment to Addendum 4 dated September 23, 2008 ("Amendment 4"). A true and correct copy of Amendment 4 is annexed hereto as Exhibit C and is incorporated herein by reference.

36. The revised schedule of Merchandise included in Amendment 4 identified Merchandise to be sold to Active with a total value of \$19,266,482. Amendment 4 ¶ 1, Schedule A.

37. The amount of additional Trade Credits issued by Active to Circuit City under Addendum 4 was also reduced to \$19,200,000 pursuant to Amendment 4. Amendment 4 ¶ 1.

38. Pursuant to the initial Advertising Agreement, transfer of title of the goods sold by Circuit City to Active occurred upon delivery of the merchandise to Active's warehouses. Advertising Agreement ¶1(C).

39. However, in connection with Addendum 4 entered into by the parties on August 26, 2008, within the 90-day period prior to the commencement of the

bankruptcy proceedings, the transfer of title provision was amended to provide that "[t]ransfer of title to the [Merchandise] from [Circuit City] to Active shall occur simultaneously with the execution of this Addendum 4 by both parties." Addendum 4 ¶ 1(ii).

**D. The December 2008 Estimated Advertising Overpayments.**

40. Pursuant to the Advertising Agreement, on November 20, 2008, Circuit City initiated a wire payment to Active in the amount of \$2,906,877.05 on account of estimated December 2008 advertising expenses.

41. On November 24, 2008, Circuit City initiated another wire payment to Active in the amount of \$2,142,096.00 on account of estimated December 2008 advertising expenses.

42. The actual invoices associated with the December 2008 advertising expenses are identified as 122008AT74, 122008NC42, 122008NT16, 122008N17, 122008NC40, 122008NC41, and 1222008NT18.

43. The actual expenses associated with the December 2008 advertising was less than the estimated

amounts wired to Active on November 20 and November 24, 2008.

44. This resulted in an overpayment to Active in the amount \$246,556.70 (the "December 2008 Overpayment").

45. Circuit City has made verbal and written demands upon Active for payment of the December 2008 Overpayment, but Active has refused to make such payments.

**E. The Cancelled January 2009 Advertising.**

46. Pursuant to the Advertising Agreement, on December 19, 2008, Circuit City initiated a wire payment to Active in the amount of \$1,725,599 on account of estimated January 2009 advertising expenses.

47. On December 30, 2008, Circuit City issued an additional payment by check to Active in the amount of \$67,881.70 on account of estimated January 2009 advertising expenses.

48. Subsequent to these payments for estimated January 2009 advertising expenses, the January 2009 advertising was cancelled in its entirety.

49. This resulted in Active invalidly holding property of Circuit City and its bankruptcy estate in the amount of \$1,793,480.70 (the "Cancelled Advertising Amount").

50. Circuit City has made verbal and written demands upon Active for payment of the Cancelled Advertising Amount, but Active has refused to make such payments.

**F. The Transfers of Circuit City's Property to Active.**

51. Pursuant to the Advertising Agreement, Addendum 4 and Amendment 4, Circuit City transferred to Active all of the Merchandise identified on Schedule A to Amendment 4 during the period from September 10, 2008 through October 20, 2008.

52. Schedule A to Amendment 4 identifies this Merchandise as having a value of \$19,266,482. Amendment 4, Schedule A.

53. Thus, during the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings, Circuit City made transfers and/or payments of its property to Active.

54. Such transfers and/or payments were made by Circuit City to or for the benefit of Active.

55. These transfers and/or payments were made to satisfy Circuit City's pre-existing debts to Active pursuant to the Advertising Agreement, including Addendum 4 and Amendment 4.

56. Upon information and belief, Circuit City was insolvent during the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings.

57. The transfers and/or payments enabled Active to receive more than Active would have received if (i) Circuit City's chapter 11 case were instead a case under chapter 7 of the Bankruptcy Code, (ii) the transfers and/or payments had not been made, and (iii) Active received payment of such debt to the extent provided by the Bankruptcy Code.

**G. Inadequate Value Received By Circuit City In Exchange For Merchandise.**

58. Pursuant to the Advertising Agreement, Addendum 4 and Amendment 4, Circuit City transferred to Active all of the Merchandise identified on Schedule A to Amendment 4 during the period from September 10, 2008 through October 20, 2008.

59. Schedule A to Amendment 4 identifies this Merchandise as having a value of \$19,266,482. Amendment 4, Schedule A.

60. Pursuant to the Advertising Agreement, Addendum 4 and Amendment 4, Active issued to Circuit City Trade Credits in an amount of \$19,200,000 upon receipt of the Merchandise valued at \$19,266,482.

Amendment 4 ¶ 1 and Schedule A.

61. Under the terms of the Advertising Agreement, however, the Trade Credits have no cash value and can be "utilized solely in accordance with the terms and conditions of this [Advertising Agreement] in connection with the purchase by [Circuit City] of media, goods and/or services." Advertising Agreement ¶ 2.

62. From the time of execution of Addendum 4 on August 26, 2008 through December 31, 2008, Circuit City purchased approximately \$30,100,000 in media advertising from Active.

63. Pursuant to the Advertising Agreement, Active established Cash Payment Requirements of approximately \$17,400,000 in connection with the \$30,100,000 of media advertising.

64. This allowed Circuit City to utilize Trade Credits of only \$12,743,935.32 in connection with the \$30,100,000 of purchased media advertising.

65. As of the date of filing of this Complaint, Circuit City holds approximately \$6,522,546.68 of unused Trade Credits.

66. These Trade Credits are of no value to Circuit City or its bankruptcy estate.

67. In exchange for \$19,266,482 of Merchandise, Circuit City received, at most, \$12,743,935.32 worth of valuable services from Active.

68. Active received approximately \$6,522,546.68 of Merchandise from Circuit City in exchange for less than a reasonably equivalent value.

69. The Trade Credits issued to Circuit City do not represent reasonably equivalent value for the Merchandise transferred to Active.

70. Circuit City received less than a reasonably equivalent value in exchange for the transfer of Merchandise to Active.

71. Upon information and belief, Circuit City was insolvent at the time of the transfers of

Merchandise or became insolvent as a result of the transfers.

72. At the times of, and subsequent to, each of the transfers, Circuit City had at least one creditor with an allowable unsecured claim that remained unsatisfied as of the commencement of Circuit City's bankruptcy proceedings. These creditors include, but are not limited to, Hewlett-Packard Company; ADI Division of Honeywell International; American Future Technology; and Hauppauge Computer Works Inc.

**H. The Trade Agreement.**

73. On June 12, 2006, Circuit City and Active entered into a cooperative advertising agreement (the "Trade Agreement"), a true and correct copy of which is annexed hereto as Exhibit D and is incorporated herein by reference.

74. Pursuant to the Trade Agreement, Active agreed to establish for the benefit of Circuit City a facility in the amount of \$3,600,000 (the "Lease Mitigation Facility"). Trade Agreement ¶ 1.

75. As consideration for the Lease Mitigation Facility, Circuit City committed to purchase advertising services from Active in an aggregate net amount of

\$30,000,000 over a three-year period from June 1, 2006 through May 31, 2009 (the "Media Commitment"). Trade Agreement ¶¶ 1, 2.1.1.

76. Schedule A to the Trade Agreement, which sets forth "operational rules" relating to the Lease Mitigation Facility, provides, in relevant part, that "[u]pon no less than ten (10) business days' prior written notice from [Circuit City], Active will make available to [Circuit City] cash in an amount up to \$3,600,000 (less any prior amount paid or utilized by [Circuit City]) for purposes of funding a lease termination or any other business purpose." Trade Agreement, Schedule A at ¶ 1.

77. Schedule A to the Trade Agreement also provides that "[t]he funds available under the Lease Mitigation Facility belong solely to [Circuit City] upon execution of the [Trade Agreement] and may be used by [Circuit City] for any purpose." Trade Agreement, Schedule A at ¶ 6.

78. Schedule A to the Trade Agreement further provides that "[Circuit City] may call any or all the amounts in the Lease Mitigation Facility at any time,

though the pace of funds usage does not impact [Circuit City's] purchasing obligation. Any amounts remaining in the Lease Mitigation Facility at the end of the Term belong solely to [Circuit City]." Trade Agreement, Schedule A at ¶ 7.

79. As of November 2008, Circuit City satisfied its Media Commitment under the Trade Agreement by purchasing \$30,000,000 in advertising services from Active during the three-year period contemplated by the Trade Agreement.

80. At the time Circuit City completed its Media Commitment obligation under the Trade Agreement, Active had previously made Lease Mitigation Facility payments of \$2,435,040, leaving a balance of \$1,164,960 due and owing to Circuit City (the "Lease Mitigation Facility Balance").

81. Circuit City has made verbal and written demands upon Active for payment of the Lease Mitigation Facility Balance, but Active has refused to make such payments.

**I. Preferential Transfers to Active from Circuit City.**

82. During the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings (the "Preference Period"), Circuit City made multiple transfers of interests of Circuit City's property to or for the benefit of Active in an amount not less than \$14,112,499.35 as set forth on Exhibit E attached hereto and incorporated herein by reference.

83. After taking into account certain defenses, Circuit City has excluded certain transfers to which there appear to have been subsequent new value provided or appear to be substantially contemporaneous exchanges pursuant to §§ 547(c)(1) and (4) of the Bankruptcy Code. Exhibit F, attached hereto and incorporated by reference, reflects Circuit City's current knowledge of the recoverable transfers made by Circuit City to Active during the Preference Period. During the course of this adversary proceeding, Circuit City (through discovery or otherwise) may learn of additional transfers made to Active during the Preference Period. Circuit City intends to avoid and recover all such transfers, whether listed on Exhibit F

or not, in an amount not less than \$9,450,978.65 (collectively, the "Transfers").

84. These Transfers were made to satisfy Circuit City's pre-existing debts to Active.

85. Upon information and belief, Circuit City was insolvent during the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings.

86. The Transfers enabled Active to receive more than Active would have received if (i) Circuit City's chapter 11 case were instead a case under chapter 7 of the Bankruptcy Code, (ii) the transfers and/or payments had not been made, and (iii) Active received payment of such debt to the extent provided by the Bankruptcy Code.

**COUNT I**

**(BREACH OF CONTRACT)**

87. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

88. The Advertising Agreement, Addendum 4 and Amendment 4 constitute valid and enforceable contracts between Circuit City and Active.

89. These agreements evidence Active's obligations to provide certain advertising and related services to Circuit City.

90. Active has failed to fulfill its legal obligations under the Advertising Agreement, Addendum 4 and Amendment 4.

91. Active either failed to provide any or all of the advertising services contemplated in the Advertising Agreement, Addendum 4 and Amendment 4.

92. Despite repeated verbal and written requests by Circuit City, Active has refused to make or remit payments to Circuit City on account of the December 2008 Overpayment and the Cancelled Advertising Amount.

93. These amounts are valid obligations under the agreements and are presently due, owing and payable by Active.

94. Active's failure and refusal to remit payment to Circuit City on account of the December 2008 Overpayment and the Cancelled Advertising Amount constitutes a material breach of Active's obligations under the Advertising Agreement, Addendum 4 and Amendment 4.

95. Circuit City performed its obligations under the Advertising Agreement with respect to the

December 2008 Overpayment and the Cancelled Advertising Amount.

96. As a direct and proximate result of Active's breaches, Circuit City has incurred damages in an amount not less than \$2,040,037.40, plus attorneys' fees, costs, expenses, and interest.

97. Specifically, Active's failure and refusal to make the required payments to Circuit City constitutes a breach of the contract for which Circuit City is entitled to a judgment in the amount of not less than \$2,040,037.40, plus attorneys' fees, costs, expenses, and interest.

**COUNT II**

**(BREACH OF CONTRACT)**

98. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

99. The Trade Agreement constitutes a valid and binding contract between Circuit City and Active.

100. Pursuant to the Trade Agreement, Active was obligated to establish for the benefit of Circuit City the Lease Mitigation Facility.

101. Pursuant to the Trade Agreement, Active was obligated to make payment of the Lease Mitigation Facility Balance to Circuit City.

102. Despite repeated verbal and written requests by Circuit City, Active has refused to make payments to Circuit City on account of the Lease Mitigation Facility Balance.

103. These amounts are valid obligations under the Trade Agreement and are presently due, owing and payable by Active.

104. Active's failure and refusal to remit payment to Circuit City on account of the Lease Mitigation Facility Balance constitutes a material breach of Active's obligations under the Trade Agreement.

105. Circuit City performed its obligations under the Trade Agreement with respect to the Lease Mitigation Facility.

106. As a direct and proximate result of Active's breaches, Circuit City has incurred damages in an amount not less than \$1,164,960, plus attorneys' fees, costs, expenses, and interest.

107. Specifically, Active's failure and refusal to make the required payments to Circuit City constitutes a breach of the contract for which Circuit City is entitled to a judgment in the amount of not less than \$1,164,960, plus attorneys' fees, costs, expenses, and interest.

**COUNT III**

**(UNJUST ENRICHMENT)**

108. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

109. In the alternative to Counts I and II but without waiving any allegation contained therein, Circuit City makes the following allegations in support of Count III.

110. Circuit City conferred a benefit upon Active by transferring cash and Merchandise to Active relating to (i) the December 2008 Overpayment, (ii) the Cancelled Advertising Amount, (iii) the Lease Mitigation Facility, and (iv) the Merchandise transfers.

111. Circuit City reasonably expected to be compensated by Active in an amount not less than \$246,556.70 on account of the December 2008 Overpayment.

112. Circuit City reasonably expected to be compensated by Active in an amount not less than \$1,793,480.70 on account of the Cancelled Advertising Amount.

113. Circuit City reasonably expected to be compensated by Active in an amount not less than

\$1,164,960 on account of the Lease Mitigation Facility Balance.

114. Circuit City reasonably expected to be compensated by Active in an amount not less than \$6,522,546.68 on account of the transferred Merchandise for which Circuit City received no value.

115. Active accepted and continues to retain the benefit of Circuit City's transfers of cash and Merchandise.

116. Circuit City has no adequate remedy at law to recover these amounts.

117. Accordingly, as a result of Active's unjust enrichment at Circuit City's expense, Circuit City is entitled to restitution from Active in an amount not less than \$9,727,544.08, plus attorneys' fees, costs, expenses, and interest.

**COUNT IV**

**(TURNOVER OF PROPERTY OF THE  
ESTATE UNDER 11 U.S.C. § 542)**

118. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

119. In the alternative to Counts I-III, but without waiving any allegation contained therein, Circuit

City makes the following allegations in support of Count IV.

120. Active is in possession, custody and control over the December 2008 Overpayment, the Cancelled Advertising Amount and the Lease Mitigation Facility Balance in an amount not less than \$3,204,997.40 plus attorneys' fees, costs, expenses, and interest.

121. Active is not a custodian for the December 2008 Overpayment, the Cancelled Advertising Amount or the Lease Mitigation Facility Balance.

122. The December 2008 Overpayment, the Cancelled Advertising Amount and the Lease Mitigation Facility Balance constitute valid and existing debts, due and owing by Active to Circuit City.

123. The December 2008 Overpayment, the Cancelled Advertising Amount and the Lease Mitigation Facility Balance are property of Circuit City's bankruptcy estates under section 541 of the Bankruptcy Code and constitute debts that are matured, payable on demand, or payable on order.

124. Accordingly, pursuant to section 542 of the Bankruptcy Code, Active should be compelled to immediately turn over and deliver to Circuit City the December 2008 Overpayment, the Cancelled Advertising Amount and the Lease Mitigation Facility Balance in an

amount not less than \$3,204,997.40 plus attorneys' fees, costs, expenses, and interest.

**COUNT V**

**(AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS UNDER 11 U.S.C. §§ 548 and 550)**

125. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

126. Within the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings, Circuit City transferred interests in Merchandise to or for the benefit of Active.

127. Each of the transfers constituted a transfer of an interest in the property of Circuit City.

128. Circuit City received less than fair consideration and less than a reasonably equivalent value in exchange for such transfers of Merchandise worth approximately \$6,522,546.68.

129. These transfers were made for no valuable consideration.

130. The transfers by Circuit City to Active were not supported by consideration deemed valuable in law.

131. Upon information and belief, Circuit City was insolvent at the time of the transfers of

Merchandise or became insolvent as a result of the transfers.

132. By virtue of the foregoing, each of the transfers was a fraudulent transfer avoidable under 11 U.S.C. § 548, and Circuit City is entitled to recover each of the transfers under 11 U.S.C. § 550.

133. Accordingly, Circuit City is entitled to a judgment in the amount of not less than \$6,522,546.68, plus attorneys' fees, costs, expenses, and interest.

**COUNT VI**

**(AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS UNDER  
11 U.S.C. §§ 544 AND 550 AND APPLICABLE STATE  
LAW INCLUDING VIRGINIA CODE §§ 55-81)**

134. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

135. Within the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings, Circuit City transferred interests in Merchandise to or for the benefit of Active.

136. Each of the transfers constituted a transfer of an interest in the property of Circuit City.

137. Circuit City received less than fair consideration and less than a reasonably equivalent value

in exchange for such transfers of Merchandise worth approximately \$6,522,546.68.

138. The transfers were made for no valuable consideration.

139. The transfers by Circuit City to Active were not supported by consideration deemed valuable in law.

140. Prior to, at the time of, and subsequent to each of the transfers, Circuit City had at least one creditor with an allowable unsecured claim which remained unsatisfied as of the commencement of Circuit City's bankruptcy proceedings. These creditors include, but are not limited to, Hewlett-Packard Company; ADI Division of Honeywell International; American Future Technology; and Hauppauge Computer Works Inc.

141. Upon information and belief, Circuit City was insolvent at the time of the transfers of Merchandise or became insolvent as a result of the transfers.

142. By virtue of the foregoing, each of the transfers was a fraudulent transfer avoidable under applicable state law, including Virginia law, and Circuit City is entitled to avoid and recover each of the transfers under 11 U.S.C. §§ 544 and 550.

143. Accordingly, Circuit City is entitled to a judgment in the amount of not less than \$6,522,546.68, plus attorneys' fees, costs, expenses, and interest.

**COUNT VII**

**(AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS  
UNDER 11 U.S.C. §§ 547 AND 550)**

144. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

145. The Transfers were made to or for the benefit of Active, a creditor of one or more of the Circuit City debtors.

146. The Transfers were made for or on account of an antecedent debt or debts owed by one or more of the Circuit City debtors before such Transfers were made.

147. The Transfers were made during the Preference Period.

148. The Transfers were made while the Debtors were insolvent.

149. The Transfers enabled Active to receive greater value than Active would have received if (i) Circuit City's cases were cases under chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) Active received payment on account of the debt

paid by the Transfers to the extent provided by the provisions of the Bankruptcy Code.

150. Each of the Transfers constitutes an avoidable preference pursuant to 11 U.S.C. § 547(b).

151. Active is either the initial transferee of the Transfers, the entity for whose benefit the Transfers were made, or an immediate or mediate transferee of the Transfers.

152. Circuit City is entitled to recover not less than \$9,450,978.65 pursuant to 11 U.S.C. § 550(a).

**COUNT VIII**

**(AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS  
UNDER 11 U.S.C. §§ 547 AND 550)**

153. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

154. During the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings, Circuit City transferred Merchandise to Active in the amount of \$6,522,546.68.

155. Each transfer of Merchandise was a transfer of Circuit City's interest in property.

156. Each transfer of Merchandise was made by Circuit City to or for the benefit of Active.

157. Upon information and belief, Circuit City was insolvent during the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings.

158. The transfers of Merchandise occurred for or on account of an antecedent debt owed by Circuit City before such transfers were made.

159. The transfers enabled Active to receive more than Active would have received if (i) Circuit City's chapter 11 case were instead a case under chapter 7 of the Bankruptcy Code, (ii) the transfers had not been made, and (iii) Active received payment of such debt to the extent provided by the Bankruptcy Code.

160. Each of the transfers constitutes an avoidable preferential transfer within the meaning of section 547 of the Bankruptcy Code.

161. Active is either the initial transferee of the transfers, the entity for whose benefit the transfers were made, or an immediate or mediate transferee of the initial transfers.

162. By virtue of the foregoing, Circuit City is entitled to avoid and recover each of the preferential transfers under 11 U.S.C. §§ 547(b) and 550.

163. Accordingly, Circuit City is entitled to a judgment in the amount of not less than \$6,522,546.68, plus interest.

**COUNT IX**

**(DISALLOWANCE OF CLAIM PURSUANT TO 11 U.S.C. § 502(d))**

164. Circuit City repeats and realleges each of the allegations set forth above and below as if fully set forth herein.

165. Section 502(d) of the Bankruptcy Code requires the disallowance of "any claim of any entity from which property is recoverable under section 542 . . . of this title . . . , unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section . . . 542 . . . of this title." 11 U.S.C. § 502(d) .

166. Pursuant to section 502(d) of the Bankruptcy Code, any claims, including Claim No. 3895, held by Defendant against the Debtors' bankruptcy estates must be disallowed unless and until Defendant pays to the Debtors the amounts set forth above.

**PRAYER FOR RELIEF**

WHEREFORE, Circuit City respectfully requests that, on its claims for breach of contract, unjust

enrichment, turnover, fraudulent transfer and preferential transfer, the Court enter judgment granting the following relief:

- A. Awarding Circuit City damages totaling not less than \$19,178,522.73; and
- B. Awarding Circuit City reasonable costs and expenses incurred in this action, including (without limitation) attorneys' fees and expert fees; and
- C. Awarding Circuit City pre-judgment and post-judgment interest; and
- D. Requiring Active to immediately turn over the amounts owed to Circuit City, plus interest, costs, expenses, and attorneys' fees;
- E. Disallowing any claim of Defendant against the Debtors' bankruptcy estates, including Claim No. 3895, unless and until Defendant pays to the Debtors the amount of any and all judgments granted to the Debtors against Defendant in this adversary proceeding; and

F. Awarding Circuit City such other relief  
as may be just and proper.

Dated: December 11, 2009 MCGUIREWOODS LLP  
Richmond, Virginia

/s/ Douglas M. Foley  
Douglas M. Foley (VSB No. 34364)  
Bryan A. Fratkin (VSB No. 38933)  
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901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel for Debtors and Debtors  
in Possession

\10269333.2

**EXHIBIT A**

**ADVERTISING AGREEMENT**

**[TO BE FILED UNDER SEAL]**

**EXHIBIT B**

**ADDENDUM 4 TO THE ADVERTISING AGREEMENT**

**[TO BE FILED UNDER SEAL]**

**EXHIBIT C**

**AMENDMENT 4 TO ADDENDUM 4 TO THE ADVERTISING AGREEMENT**

**[TO BE FILED UNDER SEAL]**

**EXHIBIT D**

**TRADE AGREEMENT**

**[TO BE FILED UNDER SEAL]**

**EXHIBIT E**

**TRANSFERS OF PROPERTY**

**Active Media Services Preference Analysis - Payment Detail**

**Exhibit E**

ACTIVE MEDIA SERVICES INC	10/15/2008	4568687	\$ 4,661,520.70
ACTIVE MEDIA SERVICES INC	10/30/2008	4571976	\$ 2,636,436.00
ACTIVE MEDIA SERVICES INC	10/30/2008	4571974	\$ 13,852.30
ACTIVE MEDIA SERVICES INC	10/30/2008	4571977	\$ 458,789.10
ACTIVE MEDIA SERVICES INC	10/30/2008	4571979	\$ 340,737.00
ACTIVE MEDIA SERVICES INC	10/30/2008	4571980	\$ 424,627.50
ACTIVE MEDIA SERVICES INC	10/30/2008	4571978	\$ 1,376,608.75
ACTIVE MEDIA SERVICES INC	10/30/2008	4571975	\$ 446,842.00
ACTIVE MEDIA SERVICES INC	11/6/2008		\$ 3,753,086.00

**Total Check Amount \$ 14,112,499.35**

EXHIBIT F

PREFERENTIAL TRANSFERS

**Active Media Services Preference Analysis - Payment Detail**

**Exhibit F**

Check Date	Check Number	Total Check Amount
ACTIVE MEDIA SERVICES INC	10/30/2008	4571976 \$ 2,636,436.00
ACTIVE MEDIA SERVICES INC	10/30/2008	4571974 \$ 13,852.30
ACTIVE MEDIA SERVICES INC	10/30/2008	4571977 \$ 458,789.10
ACTIVE MEDIA SERVICES INC	10/30/2008	4571979 \$ 340,737.00
ACTIVE MEDIA SERVICES INC	10/30/2008	4571980 \$ 424,627.50
ACTIVE MEDIA SERVICES INC	10/30/2008	4571978 \$ 1,376,608.75
ACTIVE MEDIA SERVICES INC	10/30/2008	4571975 \$ 446,842.00
ACTIVE MEDIA SERVICES INC	11/6/2008	\$ 3,753,086.00
<b>Total Check Amount</b>		<b>\$ 9,450,978.65</b>